

## REMARKS

In the Office Actions of April 3, 2003 and May 22, 2003, the Examiner has maintained his rejection of the claims under 35 U.S.C. §102 as being anticipated by *Wolfe et al.*

The above amendments and following arguments are substantially the same as set forth in an After Final response that was previously submitted by Applicant on April 29, 2003. However, the amendments and arguments were not entered of record as raising new issues. Accordingly, the amendments and arguments are again set forth herein. These previous amendments and arguments clarify the distinctions between Applicant's claimed invention and the disclosure in *Wolfe et al.*

In addition, Applicant has amended Claims 1, 11, 21, 28 and 37 to include language reflecting that Applicant's network system includes means for enabling a buyer to reach an agreement concerning the purchase of goods or services from a seller, such as the network system allowing for agreements of price to be reached, entry into contracts, or entry of credit card information or the like. No new matter is entered by these amendments. Specifically, examples of means for the network controller allowing the entry of agreements are described on page 28, line 4 - page 29, line 14. The inclusion of this limitation is intended to clarify the distinction between Applicant's invention and mere instant messaging systems which do not allow for the negotiation or purchase of goods or services.

Reconsideration, reexamination and allowance of the claims is respectfully requested.

REJECTION UNDER 35 U.S.C. §102

Wolfe et al. (U.S. Patent No. 6,282,517)

*Wolfe et al.* describes the autobytel e-commerce communication network which enables individual auto dealers to advertise their cars at one website. To this end, sellers (automobile dealers) transmit inventory information, such as vehicle models and characteristics, to a central network. Buyers are able to access this inventory online by contacting the central network, such as by accessing [www.autobytel.com](http://www.autobytel.com).

If a buyer sees a product to their liking, they place a “purchase request” which is transmitted to the central network. The purchase request is then forwarded to the individual seller for consideration. As recognized by the Examiner in his most recent Office Action, the purchase request may be transmitted to the seller by numerous vehicles, such as e-mail, pager, telephone message or the like.

However, this reference does not suggest two-way real-time communications between a buyer and seller as claimed by Applicant.

Applicant's "Real Time" Interactive System for Negotiating  
the Purchase and Sale of Goods or Services

Applicant's claimed invention is directed to a computer network including a host processor which connects buyers and sellers through remote computer terminals. Somewhat like the autobytel system, the inventory of respective sellers is recorded in each seller's computer terminal and transmitted continuously or periodically to the host processor system to create a database of inventory of all goods or services offered by sellers connected to the network. Also similar to the autobytel system, a buyer connecting to the network transmits transaction related information such as an identification of goods sought to enable the host processor to automatically match potential buyers with potential sellers.

Unlike the autobytel system, Applicant's claimed invention does not simply transmit a purchase request from the buyer to the seller. Instead, Applicant's invention provides a two-way "real time" connection between the buyer and seller. As reflected in Claims 1 - 10 and 21 - 27, Applicant's invention preferably includes two "real time" two-way connections. A first data connection is provided for providing real time two-way communication between the buyer and seller for enabling the buyer and seller to communicate by immediate written messaging. As claimed, the invention also provides a real time two-way speech connection for enabling buyers and sellers to speak with one another in real time to negotiate and complete the sale of goods or services.

With reference to Claims 11 and 28 and their dependent claims, a two-way real-time communication connection is provided between a buyer and seller. In addition, Applicant's interconnected computer network system includes both "primary" sellers and "virtual" sellers of goods and services. As clarified in the amendments in Claims 11 and 28, the virtual sellers are distinct from the primary sellers and are provided to sell the goods of another.

### PATENTABILITY

For a claimed invention to be barred as anticipated under 35 U.S.C. §102, there must be "substantial identity" between the invention sought to be patented and the prior art. A single printed publication must be so substantially the same as the invention as to accomplish the disclosure purpose of the patent law. Anticipation must encompass the invention that is claimed. It is not enough that an invention be suggested by the literature, nor that the literature made the invention inevitable.

Meanwhile, to reject a claim as obvious under 35 U.S.C. §103 requires that the invention was "obvious" in light of the disclosures in various publications publically available and related to the field of the invention. The test is to compare the new invention with those disclosed in the prior patents and other publications to determine whether one skilled in the art could have produced the invention in question using mere mechanical engineering skills, as opposed to inventive skill. Moreover, obviousness must be supported

by some suggestion in the references that they be combined and cannot be concluded on the basis of hindsight. The initial burden is on the Examiner to provide the suggestion or desirability of doing what the inventor has done.

Perhaps the clearest case of *non-obviousness* is found where the prior art, alone or in combination, does not disclose a claimed limitation, because all of the claim limitations must be taught or suggested by the prior art. *In re Wright*, 848 F.2d 1216 (Fed. Cir. 1988). As explained below, the prior art references, alone or in combination, do not disclose features of Applicant's claimed invention.

The Differences Between the Autobytel System  
Disclosed in *Wolfe et al.* and Applicant's Invention

There are numerous elements of Applicant's claimed invention that are nowhere suggested in the *Wolfe et al.* reference.

Specifically, every one of the claims includes the limitation that the host processor provides a real time two-way communication connection between the buyer and seller. This feature is absolutely not suggested in the *Wolfe et al.* reference. Instead, *Wolfe et al.* merely discloses the transmission of messages to be sent to a seller, which a seller can respond to, such as by accepting a purchase request.

In rejecting the claims, the Examiner has selected an extremely confusing definition for the term "real time" indicating that real time means:

"Of or relating to a time frame imposed by external constraints. Real-time operations are those in which the machine's activities match the human perception of time or those in which computer operations proceed at the same rate as physical or external processes."

Taken in a vacuum, this definition could be interpreted so broadly as to include communications by time capsule in which stone tablets are buried and exhumed years later for examination. However, the Microsoft definition above was clarified with language that followed. In particular, the Microsoft definition also included the clarifying language that:

"Real-time operations are characteristic of transaction-processing systems, aircraft guidance systems, scientific applications, and other areas in which a computer must respond to situations as they occur (for example, animating a graphic in a flight simulator or making corrections based on measurements)." *Microsoft Computer Dictionary*, 5<sup>th</sup> Edition.

Thus, even the Examiner's definition for real time refers to communications that are perceived as immediate, which would not include paging or e-mails as described in *Wolfe et al.* The immediacy of real time communications is further clarified within numerous additional definitions within the *Microsoft Computer Dictionary*. For example, real-time system is defined as follows:

"A computer and/or a software system that reacts to events before the events become obsolete. For example, airline collision avoidance systems must process radar input, detect a possible collision, and warn air traffic controllers or pilots while they still have time to react."

Again, real time is clearly understood by those skilled in the art. Real time communications refer to communications wherein there is no perceived delay between transmission and response.

Applicant intends the term “real time” to mean exactly what persons would understand the term to mean. The above definitions are acceptable as describing the “immediacy” intended by Applicant. However, a better and clearer definition is found in *Newton’s Telecom Dictionary*. Adopting this definition, the term “real time” means:

A voice telephone conversation is conducted in real time. That is, there is no perceived delay in the transmission of the voice message or in the response to it. This concept often applies to interaction between a computer and a terminal. In data processing or data communications, real time means the data is processed the moment it enters a computer, as opposed to BATCH processing where the information enters the system, is stored and is operated on a later time. *Newton’s Telecom Dictionary*, 15<sup>th</sup> Edition, 1999.

See also definition for “real time chat”:

“A program allowing live conversation between individuals by typing on a computer terminal.”

The foregoing definition for “real time” is the ordinary meaning to those skilled in the art, and it is adopted by the Applicant. See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (a patentee is free to be his own lexicographer). Also see *Senmed, Inc. v. Richard-Allen Medical Industries, Inc.*, 888 F.2d 815 (Fed. Cir. 1989) reflecting that a claim term’s meaning may be garnered from review of the prosecution history.

This definition for “real time” is clearly supported within the specification of the present application. However, the autobytel *Wolfe et al.* reference does not disclose or remotely suggest any type of “real time” two-way communication between a buyer and a

seller. Simply, the leaving of a message by an e-mail, page, or telephone message, is not two-way, and presents a perceived time delay and thus is not real time as defined above. Since all of the claims of the present application include this limitation, which is not disclosed or suggested in the prior art, Applicant's claims are believed allowable.

Moreover, each of the claims include additional basis for allowability. For example, Claims 1 - 10 and 21 - 27 include the additional limitation that **two (2)** real time two-way communication connections are provided, including a first two-way data connection and a second two-way speech connection. Simply, *Wolfe et al.* does not disclose or suggest any type of real time two-way speech connection. Contrary to the Examiner's strange interpretation, the leaving of a phone message, could not be construed as a real time two-way speech connection let alone **two (2)** real-time two-way connections.

Meanwhile, Claims 11 - 20 and 28 - 36 include the limitation that the network system of the present invention includes both "primary" sellers and "virtual" sellers. As clarified by the amendments, the virtual seller is not the same as a primary seller. However, the virtual seller is capable, under certain circumstances, of selling the primary seller's goods or services. Conversely, and as appeared to have been admitted by the Examiner in his recent Office Action, the autobytel system does not provide any sort of suggestion that a seller's goods can be sold by anybody but the actual seller of the goods.

Wolfe teaches seller A's computer screen may be immediately refreshed to reflect the newly created purchase request. In another embodiment, seller A may be notified via communication mechanisms such as e-mail, page, telephone message, or the like. Thus the dealer may



appropriately act on the purchase request upon its submission. (Examiner's argument at page 4, paragraph 2).

Thus, the Examiner's argument seems to reinforce that the *Wolfe et al.* reference teaches that a dealer, and a dealer only, acts on a purchase request. However, *Wolfe et al.* and the Examiner's argument do not provide any sort of suggestion for providing a "virtual" seller for selling the goods of another. Accordingly, this limitation in Claims 11 - 20 and 28 - 36 is believed to provide still an additional basis for patentability.

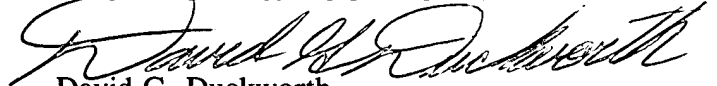
Since all of the claims include significant limitations not disclosed in the prior art, the claims are believed allowable.

#### CONCLUSION

The claims are believed to be in condition for allowance and notice thereof is respectfully solicited. If there are any remaining issues that need to be resolved, it is respectfully requested that a telephone call be placed to the undersigned.

Respectfully submitted,

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